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Supreme Court, U. S.
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NO. _____

73-108

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

UNITED STATES OF AMERICA, *Appellee*

v.

JOSEPH STASSI, SR., *Appellant*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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OCTOBER TERM, 1973

UNITED STATES OF AMERICA, *Appellee*

v.

JOSEPH STASSI, SR., *Appellant*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Appellant, Joseph Stassi, Sr., prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit rendered in the above case.

OPINIONS BELOW

Appellant was indicted for the offense of conspiring with others to smuggle heroin into the United States, and to conceal and facilitate the transportation of heroin, knowing it to have been unlawfully brought into the United States, in violation of Title 21, U.S.C.A. Section

174. Appellant was first tried on February 27-March 14, 1967 in Corpus Christi, Texas. However, after a jury verdict the District Court granted a new trial because of illegal contacts made with the sequestered jury during the course of the trial. Appellant Stassi was tried again June 19-June 26, 1967. He was convicted and sentenced to serve eighteen (18) years in the Federal penitentiary. The opinion of the United States Court of Appeals for the Fifth Circuit remanding the case for the limited purpose of further proceedings in conformity with recent decisions of the United States Supreme Court in regard to electronic surveillance is reported at 410 F.2d 946. The United States District Court for the Southern District of Texas entered a judgment of conviction and the opinion of the United States Court of Appeals for the Fifth Circuit affirming the conviction is reported at 431 F.2d 353.

The instant appeal arose through a proceeding under Section 2255 of Title 28, U.S.C.A. The Memorandum and Order of the United States District Court for the Southern District of Texas, Houston Division, of September 5, 1972 is as yet unpublished. A copy of that Memorandum and Order is printed as Appendix "A" to this petition. The opinion of the United States Court of Appeals for the Fifth Circuit affirming the order of the District Court is reported at 475 F.2d 1403 (table) and is printed as Appendix "B" to this Petition.

JURISDICTION

The Judgment sought to be reviewed from the United States Court of Appeals for the Fifth Circuit was originally entered on April 16, 1973. The jurisdiction of this Court is invoked pursuant to Title 28, U.S.C.A. Section 1254 (1).

QUESTIONS PRESENTED

1. Did the Government willfully conceal pertinent information and facts concerning Petitioner's case that, if revealed to the Jury or Petitioner's counsel, would have affected the outcome of the trial?

2. Did the Government fail to disclose and willfully conceal the fact that Milton Abramson committed perjury during his testimony at Petitioner's trial.

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law. . . .

STATEMENT OF THE CASE

Petitioner Joseph Stassi, Sr. stands convicted of conspiracy to smuggle heroin into the United States, and to facilitate the transportation and concealment of such narcotics after it had been brought into this country contrary to the law, with knowledge of the illegal importation, in violation of Section 174, Title 21, United States Code. His conviction was appealed to the United States Court of Appeals for the Fifth Circuit and that Court found that no questions raised by Petitioner relating to matters arising during the trial presented reversible error. However, the Court remanded the case to the District Court for a

factual determination as to whether the conviction had been secured through unlawful electronic surveillance (410 F.2d 946). After such evidentiary hearing, the District Court concluded that the conviction was valid and entered a new judgment of conviction. The new judgment of conviction was, in turn, appealed to the Court of Appeals and was affirmed on August 18, 1973 (431 F.2d 353).

In finally affirming the conviction, the Court of Appeals specifically stated (431 F.2d 355) that, "Stassi was convicted principally on the testimony of a co-conspirator. . . ." Detailed statements of the facts may be found not only in the two Stassi opinions, but also in the decisions involving alleged co-conspirators who were tried separately. See *Marin v. United States,* 352 F.2d 174 (5th Cir., 1965) and *Granza et al v. United States,* 377 F.2d 746 (5th Cir., 1967).

The co-conspirator whose testimony the Court of Appeals held, was primarily responsible for Joseph Stassi's conviction was one Milton Abramson, also known as Milton Bennett. Abramson, or Bennett, was the subject of extensive cross-examination during the Stassi trials. Unknown to Petitioner or the lawyers then representing him at the time of trial was the fact that an individual named Allen Eli Wright, a prisoner in the Harris County, Texas, jail during 1962 and 1963, in connection with charges or accusations not believed material to or connected with Petitioner's case, met Abramson and had several conversations with him in the jail. Abramson expressed great concern about his own prospects and told Wright that the Government wanted to make a case against "a fellow named Stacy, or close to this name, and unless this fellow

made his bond, he was going to trade them this guy for a light sentence. Guilty or not, he was going to tell them this fellow was his partner unless he got him out on bond." Wright then communicated with the Office of the United States Attorney for the Southern District of Texas in Houston, and reported that Abramson "will give you any one you want, guilty or not, just so long as he does not get all of that time" and reported specifically the threats made against "Stacy", who, it is contended was and is actually Joseph Stassi, Sr., the Petitioner in this Petition. These specific threats were not, during the trial, communicated to counsel for Stassi, as is required by the doctrine of *Brady v. Maryland*, 373 U.S. 83. The failure to disclose this information bearing as it does on the credibility of a witness who provided virtually the only incriminating evidence against Stassi is so basically unfair as to constitute a fundamental denial of due process of law as secured by the United States Constitution.

Petitioner was not present at the conversations between Abramson and Wright or at the conversation between Wright and the representative of the prosecution. He therefore does not have personal knowledge of the exact conversations and in verifying this allegation relies upon the Affidavit of Allen Eli Wright which is attached to this Petition as Appendix "C".

Additionally at the time of trial, neither the Petitioner nor the lawyers representing him were aware that grants of immunity had been made in this case or that promises had been made to significant government witnesses. In this regard, Petitioner would show that Milton Abramson was released on parole in December of 1970 and is now a free man, while this Petitioner remains incarcerated.

Not only did the prosecution fail to reveal the fact that certain witnesses received immunity, but neither of the two United States Judges before whom the claim of immunity was made revealed this information to Petitioner's defense lawyers.

In this somewhat confused state of facts Petitioner proceeded with his 2255 Motion predicated upon the hypothesis that Milton Abramson had perjured himself in "delivering Stassi", who the government allegedly wanted because of other criminal activities; that the government knew of this perjury, or at least inconsistencies in his story, and not only refused to disclose this information, but willfully concealed it from Petitioner and his defense counsel.

Every single act, promise, negotiation, and intimidation of Abramson was critical to the defensive hypothesis; every promise, inducement, bargain and negotiation was desperately needed to, and should have been revealed to Stassi's lawyers, to assist in the cross-examination of Abramson. The government relied totally on the testimony of Milton Abramson to secure the conviction of Joseph Stassi, Sr. Even the Court of Appeals acknowledged that without Abramson's testimony there would not have been a conviction (431 F.2d 353, 355). Therefore, it was patently necessary that Abramson appear as a credible witness; and the government had sufficient motive to conceal any information that could have been used to destroy Abramson's credibility.

It is in this atmosphere, and in the light of the newly discovered evidence that this Court should examine Petitioner's appeal of his denial of relief under Section 2255 of Title 28, U.S.C.A.

REASONS FOR GRANTING THE WRIT

Petitioner claims that the United States Attorneys prosecuting his case willfully concealed pertinent information and permitted the use of perjured testimony during the course of his trial.

I.

THE GOVERNMENT WILLFULLY CONCEALED PERTINENT INFORMATION AND FACTS CONCERNING PETITIONER'S CASE THAT, IF REVEALED TO THE JURY OR PETITIONER'S COUNSEL, WOULD HAVE AFFECTED THE OUTCOME OF THE TRIAL.

A criminal trial is not a game of wits between opposing counsel, the cleverer party, or the one with the greatest resources, to be the winner. The government's facilities for discovering evidence are usually far superior to the defendant's. This imbalance is a weakness in our adversary system which increases the possibility of erroneous convictions. When the government aggravates the imbalance by failing to reveal evidence which would be helpful to the defendant the Constitution has been violated. *Levin v. Clark,* 408 F.2d 1209 (D.C. Cir., 1968); *Levin v. Katzenbach,* 363 F.2d 287 (D.C. Cir., 1966).

In *Mooney v. Holohan,* 294 U.S. 103, 55 S.Ct. 340 (1935) the Supreme Court recognized the prosecutor's duty to disclose by holding that the prosecutor's deliberate failure to correct the perjured testimony of his own witness (see Petitioner's Reason, II.) which the prosecutor knew to be perjured, violated due process. In *Mooney* the Petitioner argued that "the knowing use by

the state of perjured testimony to obtain his conviction and the deliberate suppression of evidence to impeach that testimony had deprived him of due process." The state replied that "the acts or omissions of a prosecuting attorney" could never "in and by themselves amount ... to a denial of due process." The Court, in a per curiam opinion, flatly rejected the state's contention, holding that due process was not satisfied "if a state has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by testimony known to be perjured."

The *Mooney* principle has subsequently been relied upon in reversing a series of cases in which the prosecutor knowingly relied upon false testimony. In *Alcorta v. Texas,* 355 U.S. 28, 78 S.Ct. 103 (1957), *Mooney* was extended to a situation in which the prosecutor had not instigated the false testimony and the testimony had relevance only to the defendant's sentence, as opposed to his guilt. The defendant there, convicted of first degree murder, had claimed to have killed his wife in "sudden passion" after seeing her kiss a man named Castelleja late at night in a parked car. If believed, this defense would have reduced the offense to a lower grade of homocide. However, Castelleja indicated at the trial, in response to questions from the prosecutor, that he had not kissed the deceased on the night of her death and that he had had nothing more than a casual relationship with her. After the trial Castelleja admitted that he had had sexual intercourse with the deceased several times, that he had informed the prosecutor of this before trial, and that he had been told not to volunteer any information about the intercourse but to answer truthfully if

specifically asked about it. This Court held that prosecutor's action had constituted a denial of due process. The per curiam opinion noted that Castelleja's testimony had clearly created a "false impression" with respect to a material fact and that testimony had been "elicited" by the prosecutor with knowledge of its inaccuracy.

In *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173 (1959), this Court held that the *Mooney* principle also was applicable to a prosecutor's knowing reliance upon false testimony which related only to the credibility of the State's key witness. In that case, the principal witness, a confederate of the defendant, testified in response to a question by the prosecutor that he had received no promise of consideration in return for his testimony. The prosecutor, who knew this to be false, made no effort to correct the testimony, and this Court concluded that this invalidated the trial even though the jury was appraised of other, less substantial, grounds that may have led them to question the witness' credibility.

The leading case in developing the prosecution's duty to disclose is *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194 (1963) wherein this Court held that:

> "The suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution.
>
> The principle of *Mooney v. Holohan* is not punishment of society for misdeeds of a prosecutor but avoidance of an unfair trial to the accused. Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated

unfairly. An inscription on the walls of the Department of Justice states the proposition candidly for the federal domain: 'The United States wins its point whenever justice is done its citizens in the courts.' A prosecution that withholds evidence on demand of an accused which if made available, would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant. That casts the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice, even though, as in the present case, his action is not 'the result of guile,' to use the words of the Court of Appeals." 373 U.S. at 87-88.

The doctrine enunciated in *Brady* was extended in *Giles v. Maryland,* 386 U.S. 66, 87 S.Ct. 793 (1967); to other information known by the prosecutor yet suppressed by them during the trial. This potential for injustice prompted Justice Fortas, in his concurring opinion to state that:

"The State's obligation is not to convict, but to see that, so far as possible, truth emerges. This is also the ultimate statement of its responsibility to provide a fair trial under the Due Process Clause of the Fourteenth Amendment. No respectable interest of the State is served by its concealment of information which is material, generously conceived, to the case, including all possible defenses.

This is not to say that convictions ought to be reversed on the ground that information merely repetitious, cumulative, or embellishing of facts otherwise known to the defense or presented to the Court, or without importance to the defense for the purpose of preparation of the case for trial was not disclosed to defense counsel." 386 U.S. at 98-99.

Finally, and most recently in *Giglio v. United States,* 405 U.S. 150, 92 S.Ct. 763 (1972) this Court unanimously held that *Napue, supra,* must be read in the light of *Brady, supra,* and any presentation of a false statement required a new trial "irrespective of the good faith" of the attorney at trial. In *Giglio, supra,* a key prosecution witness falsely testified on cross-examination that he had never been told by prosecuting officials that he would not be prosecuted if he testified on behalf of the government. The government's trial attorney had been led to believe that his predecessor had not made any promise of immunity and accordingly took no steps to correct the statement. There the Court noted: "a promise made by one attorney must be attributed for these purposes to the Government. . . ." To the extent this places a burden on the large prosecution offices, procedures and regulations can be established to carry that burden and to insure communication of all relevant information on each case to every lawyer who deals with it.

As specific points of failure of the prosecution to disclose as required by the *Brady* doctrine and its progeny Petitioner offers the following:

1). The Government willfully concealed the negotiations between Assistant United States Attorney Bill Butler and James Harris, the attorney who represented Milton Abramson at the time of the Granza-Ferrara trial. (R. 453; L. 8 to 458; L. 14).

Milton Abramson would not testify in the Granza-Ferrara trial until he received some assurances from the Government, that he would get a lighter sentence, a better deal if he testified. These facts were not disclosed at the time of trial and therefore it must be assumed that their suppression was deliberate.

2). The Government deliberately concealed the numerous negotiations and conferences held with Milton Abramson and Assistant United States Attorneys, Bill Butler, Frederick A. Rody, Jr., William A. Jackson and Arnold Stone of the Department of Justice, all in an effort to convince Milton Abramson to testify against Granza-Ferrara and Petitioner, Joseph Stassi, Sr.

The record is replete with references to these meetings and to the deals offered Abramson in return for his testimony. (See *e.g.*, Butler, R. at 49, 55; Jackson R. at 254, 255). Everyone was aware that if given a chance Milton Abramson would not hesitate to perjure himself, if he thought it would better his chances. The Government led him to believe that by testifying in the trials against Granza-Ferrara and Stassi, they would see to it that he would get some manner of clemency. Then not only did the Government fail to disclose these negotiations with Abramson to the attorneys representing Stassi, but they willfully concealed it until after Stassi was convicted by a jury.

3). The Government willfully concealed from Joseph Stassi's defense counsel the fact that they requested one Oscar Hemken Serret be granted immunity from prosecution, and that this information be kept sealed and secret. (R. 67-71).

It is clear from the Record that the Government granted immunity to Oscar Hemken Sterret as part of a trade, *i.e.*, his incriminating testimony before a Laredo Grand Jury in exchange for his freedom and the ability to return to Mexico City, Mexico. These facts should have been revealed to Petitioner, he had a right to know.

4). The Government willfully concealed the conference between Allen Eli Wright and Assistant United States Attorney William M. Schultz and Secret Service Agent Lane Bertram in the Harris County Jail.

The trial Court in its Memorandum and Order swept aside the facts of the Wright incident on the theory that it was simply "prisoner talks". Such is not the case, and a careful examination of the Record will reveal deliberate concealment, non-disclosure, and breach of the obligation of the Government to come forward, in good faith, and disclose to defense counsel these facts and information.

A recapulation of the testimony in the record illustrates that these undisputed facts were not disclosed to the Petitioner during the trial.

> Attorney Clyde Woody testified that Allen Eli Wright told him that Milton Abramson was going to testify against Joseph Stassi, Sr., even though Stassi was not involved. (R. at 208-209).
>
> Clyde Woody told Allen Eli Wright to contact the United States Attorney's Office and give the Government the facts concerning Milton Abramson's threat to perjure himself for a lighter sentence. (R. at 208).
>
> Allen Eli Wright did contact the United States Attorney's Office, and in turn was interviewed by Assistant United States Attorney William M. Schultz and Secret Service Agent Lane Bertram. (R. at 323, 333).
>
> Captain William L. Bond, a Deputy Sheriff in Harris County, testified that Allen Eli Wright told him that he was going to tell the United States Attorney that Milton Abramson was going to incriminate Joseph Stassi, even though Stassi was not involved. (R. at 343).

Milton Abramson admitted under oath at this hearing that the Affidavit Wright signed and swore to (Appendix "C") was truthful as to what he told Wright in the Harris County Jail. (R. at 405).

These facts should have been disclosed at the trial, they were not. These events are within those required to be disclosed to the defense under the *Brady* doctrine, and the failure of the Government to do so denied Petitioner a fair trial.

II.

THE GOVERNMENT FAILED TO DISCLOSE AND WILLFULLY CONCEALED THE FACT THAT MILTON ABRAMSON COMMITTED PERJURY DURING HIS TESTIMONY AT PETITIONER'S TRIAL.

The simple facts reveal that at both Stassi trials (the Records of which are now part of this hearing) Milton Abramson denied any deal, trade or promise of leniency, and the Assistant United States Attorneys prosecuting the case sat silent and permitted such lies to go to the jury. However, now in this hearing Milton Abramson testifies that he was promised executive clemency, and that he would not have testified had he not been given this guarantee. See Affidavit Appendix "D".

MILTON ABRAMSON

A witness called by and on behalf of Petitioner, having been duly sworn, was examined and testified as follows:

Direct Examination
By Mr. Walsh

Q. "When you indicated to the Government you wouldn't testify in this case, is it not true that

a lawyer named Arnold Stone from the Department of Justice came down and interviewed you?"

A. "That's correct sir."

Q. "Well, what did Stone say that persuaded you to change your mind and become a witness?"

A. "Oh, Stone promised me that he will work immediately . . . Stone promised that he will work immediately on getting me out. For the simple reason there was another case where the fellow only stayed in eight months, that testified for the Government . . .another case that is not related to this, and I happen to know about it, and Stone got the fellow out." (emphasis ours)

Q. "Well, is it fair to say, Mr. Abramson, that your testimony in the case . . . your testimony in the Stassi case was based on the assurance that the Government gave you . . . that if you cooperated by testifying they would get you out?"

A. "I wanted a guarantee and they wouldn't give it to me."

Q. "All right. Did they finally give it to you, to your satisfaction, in any event?"

A. "Vocal . . . a vocal guarantee that as soon as this case is over we will put in . . . if I remember correctly . . . that you could put in a pardon and we will see that you get it."

A. "Huh, the whole world was promised."

Q. "Okay, the whole world was promised you?"

A. "Yes, they were going to file a petition to get me out. Mr. Butler or Mr. Jackson was going to help me all they could. The usual routine, I suppose."

Q. "But for the record I am trying to determine when you say 'the whole world', I get the general thrust of what you are saying."

A. "Well, exactly. They promised me a parole; they promised me a pardon; they promised to get me out." R. at 379-401.

The Government's failure to disclose this perjured testimony, facts that could have been used by defense counsel to impeach the only incriminating witness against Petitioner, requires a new trial. As Justice Fortas stated in *Giles v. Maryland, supra:*

> "A criminal trial is not a game in which the State's function is to outwit and entrap its quarry. The State's pursuit is justice, not a victim. If it has in its exclusive possession specific, concrete evidence which is not merely cumulative or embellishing and which may exonerate the defendant or be of material importance to the defense—regardless of whether it relates to testimony which the State has caused to be given at the trial—the State is obligated to bring it to the attention of the Court and the defense." 386 U.S. at 100.

Petitioner's fate turned on whether the Jury believed the testimony of Milton Abramson, rather than that offered by the defense. In this context, it was a violation of due process of law for the prosecution to withhold evidence that might help to exonerate the Petitioner.

CONCLUSION

For the reason heretofore stated Joseph Stassi, Sr., respectfully submits that this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing Petition for Rehearing of Order denying Petition for Writ of Certiorari to the United States Supreme Court were mailed to Mr. Anthony J. P. Farris, United States Attorney, Federal Building, 515 Rusk Avenue, Houston, Texas, and the Solicitor General, Department of Justice, Washington, D.C. 20530 on the _____ day of April, 1973, by depositing same in the United States mail properly stamped and addressed.

_____
C. ANTHONY FRILOUX, JR.

APPENDIX "A"

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Civil Action No. 71-H-913
(Filed September 6, 1972)

JOSEPH STASSI, Petitioner,
vs.
UNITED STATES OF AMERICA, Respondent.

WILLIAM F. WALSH, Esq., Houston, Texas, attorney for Petitioner.
ANTHONY J. P. FARRIS, Esq., United States Attorney, and JAMES R. GOUGH, Esq., Assistant United States Attorney, Houston, Texas, attorneys for Respondent.

September 5, 1972

MEMORANDUM AND ORDER:

Of all the problems which beset the District Courts of the United States today, and which cause the overcrowded dockets, the delay in disposition of cases, etc., no single factor contributes more than this: that is, the inability of the Court, ever, finally to conclude a criminal case. Despite the pains and precautions which may be taken to assure a defendant his every right in the trial on the merits; despite innumerable pre- and post-trial motions; despite most vigorous representation by experienced and competent counsel of his own choice; and despite careful consideration and affirmance on appeal

and the denial of certiorari—wherever the defendant has access to unlimited funds with which to employ new counsel—he may and does, with new counsel, make allegations which require extensive further hearings and findings.

Such is the case here. It is a proceeding under § 2255 of Title 28 U.S.C.A. It is no more than a rehash of the credibility of a government witness. It is completely without merit, as noted at length hereafter. Armed with nothing new except an affidavit from a fellow prisoner in the Atlanta penitentiary, petitioner contends that the government's entire case was a fabrication; and that the government withheld *Brady v. Maryland* data which should have been disclosed. As I reflect upon the matter, and the complete absence of any substantial evidence to support the complainant's allegations, together with the repeated attempts of petitioner's counsel to secure the production of all manner of government files,[1] I am convinced the real purpose of this proceeding is not to gain the relief which ostensibly was sought, but hopefully to gain access to government investigatory files and data which might be searched through at leisure in the hope of uncovering some matter to be raised in future proceedings, and to learn who had informed on this group.

The charge on which the defendant was convicted involves an exceedingly large and involved heroin smuggling conspiracy. Many persons were involved. Two pled

1. For example, in the present proceeding petitioner demanded every file of every federal investigatory agency (Customs, Narcotics, F.B.I., Postal Inspectors) in which his name appeared. The stated purpose was to show (so petitioner contended) that he was not known to have been in the narcotics business *prior to the present offense.*

guilty (Adela de Castillo and Milton Abramson); one or two of the lesser lights were granted immunity; and four were tried. The several opinions of the Court of Appeals affirming these trials give something of the history of the case.[2]

Nevertheless, to view the present § 2255 hearing in context, a summary, as abbreviated as possible, follows.

THE BACKGROUND

On November 2, 1962, the United States Customs Service at McAllen, Texas, learned that a suitcase of heroin (later determined to contain some 22 pounds of exceedingly high grade heroin of French origin) was checked at the bus depot in that city. Thus started the investigation. When Adela Gomez de Castillo later claimed the suitcase and boarded a bus for Houston, a Customs Agent boarded the same bus and others followed.

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2. The several trials, and appeals, were as follows:

(1) United States v. Marin—Judge Noel, 4/27-4/28/64. Defendant represented by M. Gabriel Nahas, Jr., Esq., of Houston, Texas, sentenced to 20 years. Affirmed 352 F.2d 174 (5th Cir. 1965). And see Randazzo v. United States, 339 F.2d 79 (5th Cir. 1964), vacating and remanding to District Court.

(2) Granza and Ferrara—Judge Garza, 9/17-9/24/64. Defendants represented by Sidney H. Koblentz, Esq., New York, New York, and Woody and Rosen, Houston, Texas. Granza, as second offender, sentenced to 20 years; Ferrara, as second offender, sentenced to 18 years. Affirmed 377 F.2d 746 (5th Cir. 1967), appeal (on motion for new trial) affirming Judge Garza's denial, 381 F.2d 190 (1967); second appeal, 427 F.2d 184 (5th Cir. 1970).

(3) Stassi I—Judge Garza, 2/27-3/14/67. Defendant represented by Percy Foreman, Esq., and Anothony Friloux, Esq., of Houston, Texas.

(4) Stassi II—Judge Connally, 6/19-6/26/67. Defendant represented by Percy Foreman, Esq. and Anthony Friloux, Esq., of Houston, Texas. Stassi sentenced to 18 years. Remanded 410 F.2d 946 (5th Cir. 1969), aff'd 431 F.2d 353 (5th Cir. 1970).

On arrival in Houston, and on checking into the Texas State Hotel, Adela was arrested with the narcotics in her possession. Almost immediately she agreed to cooperate with the authorities, and to make delivery according to schedule to an individual whom she did not know. She did so, in sight of the Customs Agents, and they thereupon arrested Milton Abramson.

Abramson is the key figure in this proceeding, as he was the key witness in the Stassi trials. He was an old pro, having been in any number of shady transactions for the better part of his life, and having two previous hard narcotic convictions (one opium, 1940, and one heroin, 1954). As might be expected, Customs sought to secure his cooperation in order to apprehend the next conspirator up the ladder; but again as might be expected, Abramson was completely uncooperative. He retained private counsel (Clyde Woody, Esq. of Houston, Texas, and Sidney Koblentz, Esq. of New York City) and prepared for trial. During this period of investigation, the Agents learned of the involvement of the petitioner here, Joseph Stassi, of Brooklyn, New York, and of his leadership of the smuggling ring involved, but lacked solid evidence thereof.

On December 17, 1962, Abramson was tried in the Laredo Division of this Court for a violation of § 1407 of Title 26 U.S.C.A. (failing to register, as one convicted of a narcotic offense, on crossing the international border).

Abramson was scheduled for trial in Houston March 14, 1963, before Judge Allen B. Hannay on the heroin conspiracy charge. But Abramson was no fool. He realized that with two prior narcotic convictions, and being

arrested with 22 pounds of heroin in his possession, he faced a severe and extended sentence. At the very moment of trial, and without the prior knowledge of his attorneys, he indicated that he wished to plea bargain with the United States Attorney. At that moment he discharged his New York counsel (Koblentz) stating "You don't represent me", but retained and consulted with his Houston attorney (Woody). (Rec. pp. 229, 412; see also Stassi II, pp. 485-488.[3]) In return for his promise to testify—truthfully and at length—against his other conspirators, the government agreed (1) to permit him to waive indictment, and to be charged by criminal information with violation of § 4704 of Title 26 U.S.C.A. (carrying a lesser maximum sentence and the possibility of parole); (2) that his agreement to cooperate would be brought to Judge Hannay's attention; and (3) that he would be confined so as to protect him from other prisoners (who frequently take vengeance against one of their own who appears as a government witness). (Rec. pp. 254, 286.) He was also promised, either at that time or perhaps thereafter, by Mr. William B. Butler and/or Mr. William A. Jackson, the two Assistant United States Attorneys handling his case, that if he cooperated fully, they would assist him at a later date in a request he might make for executive clemency. (Stassi II, pp. 489 f.f., 825-865.) Pursuant thereto, Abramson pled guilty before Judge Hannay to a violation of § 4704; and as a multiple offender was sentenced to 13 years confinement on April 5,

3. "Rec. pp." refers to page reference in the present 2255 proceeding (Civil Action 71-H-913). "Stassi I pp." refers to page reference in record of first Stassi trial, transcribed, but not appealed. "Stassi II pp." refers to page reference in record of appeal of second Stassi trial, from which appeal was taken. "G & F pp." refers to page reference in record of Granza and Ferrara trial.

1963. On April 8, 1963, he was sentenced to an additional and consecutive three years by the undersigned on the § 1407 charge.

Immediately after his guilty plea, Abramson appeared before a grand jury and gave testimony. Indictments were returned against Stassi, Anthony Granza, Vincent Ferrara and others. Granza and Ferrara were arrested promptly; but when efforts were made to arrest Stassi, it was found that after Abramson had pled guilty, and began cooperating with the government, Stassi became a fugitive. He remained in this status, using fictitious names, false identification, wearing a new mustache, and moving frequently from one address to another until his arrest in Florida January 25, 1966, some three years later. (Stassi II, pp. 1210-1235.)

The first trial of the series here involved at which Abramson testified was that of Granza and Ferrara, in Corpus Christi, Texas, before Judge Reynaldo G. Garza of this Court. These two defendants were the wholesalers of the heroin to whom Abramson made delivery, on Stassi's direction, on some four or five different occasions. The shipments shown in the evidence totaled approximately 100 pounds. Based on Abramson's testimony, corroborated in minute detail by documentary evidence, Granza and Ferrara were convicted.

Following his arrest in January, 1966, Stassi filed an appearance bond in the amount of $150,000 and secured his release pending trial. He retained Percy Foreman, Esq., an experienced and highly competent attorney, and Anthony Friloux, Esq., a former Assistant United States Attorney, who likewise was highly competent in the handling of cases of this nature. They represented him

throughout both trials. On appeal Stassi was represented additionally by Clyde Woody, Esq. of Houston.

Stassi was first tried February 27-March 14, 1967, before Judge Garza in Corpus Christi, Texas, and was found guilty by jury. Abramson testified in the greatest detail. His cross-examination by Mr. Foreman consumed five days of trial and 766 pages of the transcript.

After the jury verdict of guilty, Judge Garza granted a new trial by reason of the fact that certain innocent, though ill-advised, contacts had been permitted with the sequestered jury during the course of the trial. The case was then transferred to Houston for a second trial.

The second trial of Stassi began June 19, 1967, and was concluded June 26, 1967, before the undersigned. The testimony was much the same as at the first trial. Abramson testified at length as to his association with Stassi, who was the money man in the entire enterprise. He testified to various pickups which he (Abramson) had made of quantities of narcotics (usually in the range of 20 pounds), at Stassi's direction, and of his subsequent delivery to Granza and Ferrara. He testified to a number of trips to Mexico City, sometimes with Stassi, when arrangements were made for the purchase from "the French Connection", Mondoloni and Chauvet (who have never been arrested). (Stassi II, pp. 228-457.) Again his testimony was corroborated in meticulous detail by documentary evidence such as hotel registrations, air-plane tickets, telephone toll charges, etc. (e.g. Stassi II, pp. 952-970, 975-989, 999-1022.)

Stassi's defense was simply that Abramson's testimony was a complete fabrication, induced by promises of leniency by the government. It was his contention that

he was a legitimate businessman and had no connection with the narcotics traffic. There were only two defense witnesses. First was Mr. William B. Butler, Assistant United States Attorney, who testified as to inconsistencies in Abramson's testimony and the promises made to him. The second was Maurice Sokoloff, who had accompanied Abramson and Stassi on a trip to Mexico City. During this trip they did see one or two individuals apparently with regard to a prospective and legitimate (though extremely tenuous) mining venture. Stassi did not testify, and there was no evidence to explain his flight, the perjury committed in seeking bond (*Stassi v. United States,* 401 F.2d 259), or to dispute Abramson's testimony of his complicity. Additionally (though not heard by the jury), there has been no explanation of the negotiations on his behalf, while a fugitive, to surrender voluntarily if the government would meet his terms. (Stassi II, pp. 1560-1569.) Again a verdict of guilty was returned. Stassi was sentenced to 18 years.

Again, the cross-examination of Abramson by Mr. Foreman was extensive and exhaustive. It consumes some 50 pages of the record (Stassi II, pp. 458-953). Mr. Foreman was armed at that time (1) with Jencks Act statements furnished by the government (Stassi II, pp. 665-671); (2) with Abramson's testimony before the grand juries, furnished by the government (Stassi II, pp. 651-654, 673); (3) with Abramson's testimony in the Granza and Ferrara trial (Stassi II, pp. 695-6); and (4) with the transcript of the first Stassi trial in Corpus Christi (Stassi II, pp. 656-657, 850-853). He was aware at that time, and cross-examined Abramson extensively about, his agreement to testify in return for the promises made by the government, set out above (see e.g. 825-856,

482-515 and Opening Statement by Mr. Foreman, pp. 184-187 of Stassi II).

THE ISSUES HERE

The points which petitioner desired to raise in this § 2255 proceeding were these (see Transcript of pre-trial hearing, January 26, 1972):

1. The Allen Eli Wright Matter.

It is alleged that prior to trial of Stassi, Abramson had told Wright, a cell-mate in the Houston jail, that he (Abramson) would testify falsely against Stassi; that this was made known to government agents; and was not disclosed to defense counsel.

2. The Oscar Hemken Immunity Matter.

Hemken was a fringe figure in the conspiracy, and he was granted immunity by the government. Petitioner contends that Stassi's counsel was not aware of that fact, and that the government should have made the disclosure.

3. Abramson's Acquaintance with Hemken.

Petitioner contends that the government should have disclosed an alleged false statement by Abramson that he did not know the individual (Hemken) who had made delivery of one of the heroin shipments.

4. Disclosure of Government Files.

Petitioner contends that all of the government's investigative files should have been made available to defense counsel prior to the Stassi trial.

5. Alleged Use of False Testimony.

Petitioner contends that the government knew

that Abramson's testimony was false, at least insofar as it implicated Stassi, and hence should not have used this witness.

These questions will be dealt with in order.

The Allen Eli Wright Matter.

Allen Eli Wright was convicted by this Court in 1963 of transporting and selling stolen securities, and sentenced to a ten year term of confinement by Judge Allen B. Hannay. He was confined in the Houston jail with Abramson during the interval from February 2, 1963 to March 18, 1963. During this period, Wright sent word to William Schultz, the Assistant United States Attorney in charge of the prosecution of Wright, that he wished to see him at the jail. Schultz and Lane Bertram, Agent in Charge of Secret Service at Houston, who was investigating Wright's case, went to the jail to see Wright. There was a discussion, not about Wright's case, as the federal agents had anticipated, but about Abramson and his testimony.

In his testimony at this hearing, Wright has testified that he told Schultz and Bertram that Abramson had indicated that he (Abramson) would testify against Stassi, and would so testify "whether Stassi was guilty or not". Abramson had stated to Wright, allegedly, that as a three time loser he faced a very long sentence and would testify against Stassi, whom the government was seeking to convict. Wright goes further in his testimony, and states that he construed Abramson's statement that he would testify, whether Stassi was "guilty or not", as meaning that Abramson knew Stassi to be innocent, and thus Abramson would be testifying falsely. All this, Wright says, he told to Schultz and Bertram (Plain-

tiff's Ex. 6; Rec. pp. 135-143). Wright's motive, so he says, in arranging this interview was simply his desire to prevent an innocent man from being prosecuted and going to prison.

Schultz, the former Assistant United States Attorney, in his testimony vaguely recalled the meeting, but denies that he was told that the government expected to use a witness who would testify falsely (Rec. pp. 320- 324). Had he been so advised, even though the case in which such testimony was to be offered was not his own, he would immediately have notified his superiors.

Bertram's testimony apparently is based on a clear recollection of the transaction. He states that Wright was an informer, and had previously given information to the Secret Service; that Wright's purpose in asking for the meeting ostensibly was to be of assistance to the government (Rec. p. 333); and that what he stated was that if the government agents "handled" Abramson correctly, that he would talk, and was on the verge of doing so at that time. Wright's motive appeared to be to gain good will with the prosecuting agency, as he was at that time awaiting sentence (Rec. p. 208). Bertram denied that Wright made any statement that Abramson said he would testify falsely against Stassi; only that he could be persuaded to testify if the government approached him properly (Rec. pp. 330-337).

None of this was known, or came to light, until long after the Stassi trial. It first saw the light of day while Stassi and Wright were serving time together in Atlanta penitentiary. In early 1969—some six years after the event—when Wright met Stassi casually in the Atlanta penitentiary, allegedly he told Stassi of the conversation

with Abramson and prepared an affidavit, which is a part of this record and to which I refer (Rec. pp. 155-156). It is the basis of this § 2255 proceeding.

This affidavit is inaccurate in several particulars (of minor significance) and is in conflict with Wright's testimony at this hearing in one important respect.

It is inaccurate as to date. The affidavit fixes the conversation between Wright and Abramson as "on or about July 11, 1962". The records of this Court reflect that the only period of time during which Abramson and Wright were confined jointly in the Houston jail was February 2 to March 18, 1963. The conversations inevitably took place during this period and did not extend over a matter of several months as the affidavit states.

The affidavit is further in error as to the alleged statements by Abramson as to the source of the heroin. The affidavit states that he told Wright of a heroin operation in Mexico, and of a plant where it was produced, together with the names of the operators. While I have no way of knowing what Abramson may have told Wright in this respect, this was not the source of the heroin. The records of the several trials show without dispute the heroin was of French origin and acquired from two Frenchmen in Mexico City.

Of importance, however, is this. The thrust of the affidavit—as to what Abramson is alleged to have told Wright—is to the effect that Abramson and Stassi were close friends, and perhaps business associates. It was for this reason that Abramson felt that Stassi should have come to his aid, and should have made bond for him. The affidavit is replete with statements attributed to

Abramson, that unless Stassi came forward and made his bond that he—Abramson—would "make a deal". Wright's testimony at this hearing, however, was directly to the contrary. His in-court testimony was to the effect that Abramson had indicated he had not known Stassi—that he was a complete stranger (Rec. pp. 180, 181). Wright categorically denied that Abramson had said anything about securing help from Stassi concerning his release on bond (Rec. pp. 181, 182). Thus the affidavit gives the picture of a man disenchanted with a friend, who, he thought, should have come to his aid, and did not. He was willing to testify against such friend "guilty or not" (though it went against the grain to do so), because of this default, as well as to save his own skin. (Compare statement by Abramson, Stassi II, p. 824.) The in-court testimony gives a different picture. It is of a man perfectly willing to manufacture a story out of whole cloth, and to attempt to convict an innocent stranger, at the investigation and with the connivance of the government attorneys, in return only for hope of a lighter sentence.

With respect to this issue, I find the fact to be as follows:

Abramson and Wright were confined together during the interval stated, and Abramson made many statements designed to impress Wright with Abramson's importance in the narcotic traffic. Abramson was, and is, a braggart, and an expansive and prolific talker. Abramson was extremely anxious to be released on bond and was sorely disappointed at his friend Stassi in not coming to his aid. I find that Abramson did make statements to Wright to the effect that he would make a deal with

the government, and would "give them Stassi",[4] in the hope of leniency from Judge Hannay. I find that he never told Wright that he—Abramson—would testify falsely; only that he was considering taking action which he never before expected to take, namely, to testify as a government witness against one of his friends.

I further find with regard to this issue that in calling for the meeting with Schultz and Bertram, Wright was not, as he would have us believe, clothed in a cloak of righteous indignation; rather, as Bertram has testified, having been convicted and awaiting sentence, he was again offering information which would possibly be of benefit to the government for such help as it might be to him. I further find that Wright did not tell Schultz or Bertram that Abramson had said that he would testify falsely, but that he told them that Abramson could be persuaded to testify. Thus these federal agents had no reason to make report of any such matter to their superiors or to advise opposing counsel. Both Schultz and Bertram are, and were, men of honor and integrity, and without question if either had reason to believe that a government witness was preparing to testify falsely would have reported the matter to the United States Attorney or his first assistant (the latter, Mr. Jackson, being in charge of the Abramson-Stassi matter).

Finally, with respect to the Wright affidavit, it is interesting to note the following. Mr. Woody was aware

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4. The expression to "deliver" or to "give them" (the government) someone was a favorite one of Abramson. By use of it, he meant he would testify, and that his testimony would be about facts sufficient to convict—not that he would testify falsely. See his testimony, Rec. pp. 382, 391; Stassi II, p. 864.

of this matter from its inception in March, 1963, at which time he represented both Wright and Abramson. He later represented Granza and Ferrara at their trial and on appeal. He represented Stassi on his appeal. At no time did he call Wright's statement to the attention of any court. After Stassi secured the Wright affidavit in the Atlanta penitentiary in February, 1969, Woody went to Atlanta, secured a handwritten copy and had it typed (Rec. pp. 210-214). Neither he, nor any other attorney for Stassi, took any action for more than two years, until this proceeding was filed on August 19, 1971.

The Oscar Hemken Immunity Matter.

As stated heretofore, Hemken was a minor participant who made a single delivery of heroin from Mexico to San Antonio, Texas, where it was picked up by Abramson. He was granted immunity to secure his testimony. Petitioner now contends that his trial attorneys were unaware of this fact and that Hemken's grant of immunity should have been made known by the government in order better to impeach the witness. The raising of this point means no more than that petitioner's counsel have not taken the trouble to familiarize themselves with the record. Hemken appeared as a witness in the Granza and Ferrara trial (G & F Rec. pp. 481-494). He did not testify in either Stassi I or Stassi II.

If this is not enough of an answer, it appears further that Hemken admitted the grant of immunity during his testimony in the Granza and Ferrara trial (G & F Rec. pp. 487, 488, 493). This record was available to Mr. Foreman and Mr. Friloux during the trial of both Stassi I and Stassi II. If they could secure any benefit

from the fact that a person who did not testify had received immunity, that information was before them.

Abramson's Testimony About His Acquaintance With Hemken.

Petitioner presently complains further that Abramson testified falsely in the Granza and Ferrara trial that he was not acquainted with Hemken, and that this should have been made known to Stassi's trial counsel. While I have difficulty in seeing the relevancy of such a development in trial of other defendants, to which Stassi was not a party, the point is easily answered. There is not a word of testimony to show that Abramson did know Hemken, nor do the circumstances suggest that such might be the case. The delivery which Hemken made was accomplished in this fashion. Hemken drove a vehicle from Mexico to San Antonio, Texas. He parked the automobile in the parking lot of the motel where both he and Abramson were staying. Abramson's presence was unknown to Hemken. Pursuant to plan, on the following day Abramson looked in the trunk of Hemken's vehicle and removed the heroin which had been placed there. Abramson never saw the delivery man. Hemken was a resident and citizen of Mexico and was employed as a courier by those at the Mexican end of the operation.

I cannot avoid the conclusion that counsel for petitioner is confused in this matter, again from a lack of familiarity with the record. There was a development in the first Stassi trial as to the acquaintance of Abramson with the man who took delivery of the heroin after Abramson had picked it up. Counsel might be hoping to make some capital from this point and thus be confusing it

with the Hemken matter. The incident developed thus—after Abramson took the narcotic from the automobile, he was to turn it over to a pickup man who Abramson would "recognize". The "pickup" man was one Archie Randazzo, also a New York criminal and well-known to Abramson. At the first Stassi trial, in describing this incident, Abramson testified that he did not recognize the pickup man. The United States Attorney thereafter asked for a recess and advised Judge Garza and the defense counsel that such testimony was inaccurate; and that Abramson in fact knew Archie well. A heart-to-heart talk was had with the witness, who admitted that he had simply been trying to protect an old friend, and thereafter admitted the error of his testimony (Stassi II, pp. 877-883, 1247-1257). I suspect this is the incident which counsel had in mind. At any event, the point has no merit. Petitioner's trial counsel were aware of it at all times.

Disclosure of Government Files.

In this proceeding petitioner's counsel complained that at the trial of Stassi, as well as here in this proceeding, all files of the various governmental agencies should have been produced, for the ostensible purpose of permitting defense counsel to show that Stassi had no prior criminal narcotic record. There are many answers to this suggestion. First, he was not on trial on his prior record, but only for his complicity in the current offense. Additionally, if there was error on the part of the Court in denying the production of such records, it was a matter which could and no doubt would have been corrected on the Stassi appeal.

The Alleged Falsity of Abramson's Testimony Implicating Stassi.

As the last point in their attack, petitioner's counsel again raised the question of Abramson's credibility. It is phrased a little differently here. It is charged that it was not only false, but known by the government to be false and thus that the government attorneys breached their obligation of integrity and good faith.

I think little more need be said on this issue. Conceding that Abramson was the one live witness to finger Stassi, this is not surprising in light of the practice of those involved in narcotics, shown abundantly by this record, to take the greatest pains to protect the identity of those involved from each other. It appears that Stassi's participation was known only to (1) Abramson, (2) the French sources, who were not arrested, and (3) possibly Granza and Ferrara, who, of course, did not testify.

Abramson's testimony has been subjected to the most vigorous and searching cross-examination in three separate trials and supported and corroborated by unimpeachable records and circumstances. It has been accepted on each occasion. The box score is 36 jurors to zero. This is sufficient.

With respect to the foregoing issues (other than the Wright matter heretofore considered), I make the following findings. It was known to all counsel in the case, as well as to the judges concerned, that Abramson was not only an important witness, but one whose credibility was subject to serious question. By reason of this fact, the government attorneys made full and complete disclosure to Mr. Foreman and Mr. Friloux of every cir-

cumstance within their knowledge reflecting on Abramson's credibility; and similarly took the greatest pains to corroborate his testimony. At the Stassi trial his attorneys were advised of and examined the witnesses in full about the plea bargaining and the promises made to Abramson to induce him to testify. Hemken's position was well known, and admitted by him in the course of his testimony in the Granza and Ferrara trial. Abramson did not testify falsely about any material matter and particularly did not testify falsely concerning the participation of the defendant Stassi. On the occasion when Abramson did not testify accurately, it was in an attempt to protect a friend; and when this occurred with the government's knowledge, it was immediately corrected.

While not evidentiary in nature, and not considered by me as such, two other circumstances are worthy of note with respect to the foregoing issues.

Mr. Foreman and Mr. Friloux both were subpoenaed as witnesses for the petitioner and each appeared and was sworn. Neither was called as a witness. Recognizing the unquestioned devotion of these two defense attorneys to their client's best interests (as soon as satisfactory fee arrangements have been completed), certainly it would appear that if either of these two attorneys had felt that the government had withheld information or treated them unfairly, they would have testified to this effect.

Secondly, it is noted that Mr. Stassi while making the contention that he is a legitimate businessman, and the victim of a fraudulent scheme between a dishonest witness and the government attorneys, has sat through two trials and this 2255 proceeding without offering a word of testimony in his own behalf. This is particularly worthy of

note in light of the fact that in seeking the Court's permission to have Mr. Stassi brought from the Atlanta penitentiary to Houston for the present hearing, his attorneys stated unequivocally that he desired the opportunity to appear and be heard as a witness. In a letter to the Assistant United States Attorney, on the same subject (February 28, 1972), Mr. Stassi's attorney stated that he was "an essential, necessary witness and that a hearing without his presence is an exercise in futility".

ADDITIONAL ISSUES NOT COVERED BY THE PRETRIAL ORDER

During the course of the hearing, and thereafter, the following matters have arisen which I consider appropriate to mention briefly. They add little or nothing to the position of the parties or the overall consideration of the case.

Attempt to Disqualify the Undersigned By Calling As a Witness

Petitioner's counsel undertook to call me as a witness for the petitioner at the opening of the hearing, for the stated purpose of proving that immunity had been granted to Hemken.

At a pretrial conference, this matter had been discussed at length with counsel. While I advised counsel that I had no independent recollection of the incident which had occurred some eight years prior thereto, I further advised them that I would make inquiry of the court records.

The facts are these. In February, 1964, the undersigned presided at a session of court at the Laredo Di-

vision. A grand jury was in attendance. At that time an Assistant United States Attorney, together with Hemken and his counsel, appeared and asked the Court to hear a motion for the granting of immunity; and that it be held in chambers rather than in open court, to protect Hemken from reprisals by other jail inmates.

An in-chambers conference was held. Present were the Assistant United States Attorney, Hemken, his counsel, and the official court reporter. The hearing consisted of no more than a statement that the parties had agreed that immunity would be granted Hemken in return for his testimony, with the necessary letter from the Department of Justice authorizing this action. An order to this effect was signed. The entire proceedings were reported and transcribed. The papers were filed with the clerk. The transcript of such proceedings was made a part of the present record (Rec. pp. 67-71).

In light of this development, I advised counsel that I considered this as no more than a thinly disguised and unethical attempt to disqualify the presiding judge by attempting to bring the matter within the purview of Section 455 of Title 28 U.S.C.A., with the apparent hope of securing another judge with no familiarity with the case or its background. I do not consider that counsel may call the presiding judge as a witness, and thus bring about his disqualification, with respect to his prior official acts which are a matter of public record.

The James Harris Matter.

When Abramson first appeared as a witness in open court in the Granza and Ferrara trial, he requested that Judge Garza appoint counsel for him to advise with him

as to his rights. Judge Garza appointed James Harris, Esquire, a practicing attorney in Corpus Christi.

After consulting with his client, Harris recognized that his best service would be to assure that the government would live up to its commitments to Abramson. He discussed the matter with the Assistant United States Attorneys.

There was some discussion as to whether a letter would be written by the United States Attorneys to Abramson reciting the agreement. It is uncertain whether this was ever done. The files of the United States Attorney did not disclose a copy thereof, nor has Mr. Harris or his then secretary (see the Margie George Matter hereafter) produced a copy. There is nothing in the testimony of Mr. Harris to suggest that the government's agreement was anything other than that testified to at such length by Abramson and by the United States Attorneys.

Petitioner contends here first that there was such a letter, and that the failure to furnish a copy to petitioner's counsel was an error of such gravity as to warrant a new trial. I find that petitioner has not met the burden of showing that in fact such a letter was ever written, and if it was, then it has been lost. Whether the government's commitments were oral or written I hold to be immaterial. I find—and I believe it is undisputed—that counsel for all of the defendants against whom Abramson testified were thoroughly familiar with the fact that his testimony was the result of a bargain struck with the government. Every juror had it pounded into his consciousness. In fact this was the only defense which Stassi offered. This point, too, is completely without merit.

Motion to Reopen.

Sometime after the hearing was concluded, petitioner's counsel filed several motions to reopen seeking to offer the testimony of three witnesses, namely, Margie George, Joseph D'Amico and Arnold Stone. An affidavit with respect to the first two named has been filed. The matters will be dealt with separately.

Margie George.

The affidavit shows that this lady was the secretary to Mr. Harris at all material times, and until perhaps two years ago. Mrs. George simply states that during her employment by Mr. Harris she recalls creating a file for "Milton Abrams" containing notes by Mr. Harris, "as well as a letter from a Department of the United States Government". She states that she does not recall the contents of the letter. She has searched Mr. Harris's files and has been unable to find any such letter.

As noted earlier, I consider the entire Harris matter to be of little, if any, significance. The testimony of Mrs. George, as reflected by her affidavit, would add nothing to it.

Joseph D'Amico.

D'Amico makes an affidavit dated March 31, 1972, stating that he is presently an inmate of the Atlanta penitentiary. In 1964 and 1965 he had been confined (on another conviction) with Milton Abramson during which interval he became acquainted with Abramson. It should be noted parenthetically that this was prior to Abramson's testimony in the Stassi trials. It is not clear whether it was before or after his testimony in the Granza and Fer-

rara trial. At any event it would appear that Abramson, as usual, bragged of his importance in the underworld and of his prominence in the narcotics traffic. D'Amico states that Abramson told him that he (Abramson) had agreed to cooperate with the government and "put this guy away" (apparently referring to Stassi) to prevent a sentence of 300 years. Abramson allegedly denied, however, that he would testify despite his promises to the government, stating "I am no stool pigeon and would die before putting anyone in jail." The affidavit in its entirety is of record and I refer to it.

I consider this nothing more than additional "prisoner talk" and entitled to no further consideration. It is the same type matter as the Wright affidavit, although less detailed and explicit.[5]

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5. As an illustration of the unreliability of such prison inmates talk, and to the ends to which such persons will go to incur favor either with the government or with those whom they believe to be active in the underworld, I refer to the position of Troy Odell Williams, a witness in this hearing.

Williams was an inmate of the Atlanta penitentiary with Wright and Stassi, and a close friend of each. He was familiar with the matters leading up to the Wright affidavit. He wrote the United States Attorney in Houston to the effect that he had important information of interest to them and suggesting that he be visited promptly.

Pursuant thereto John Fallon, who had been active in the Stassi investigation, and John H. Mosely, Customs Agents from New York City and Atlanta, respectively, called upon Williams in the penitentiary. Mr. Fallon's report of Williams' statements is in the record and I refer to it. It is, however, entirely hearsay and I have not considered it as evidence.

In substance Williams speaks of the friendship which developed between Allen Eli Wright and Stassi, and of their efforts toward a new trial for Stassi by reason of the events which occurred in the Houston jail many years before. He states that Wright had spent much time and had many connections in South and Central America (corroborated by Wright's testimony here); that Stassi offered the

Arnold Stone.

Perhaps this illustrates most clearly the level to which this matter has descended. During the course of the Stassi investigation, Arnold Stone, Esquire, was an official with the Organized Crime Section of the Department of Justice. He was interested in and participated to some extent in the investigation, and was in Texas on one or more occasions in connection therewith.

In a pretrial conference preparatory to this hearing and in an effort to accommodate petitioner's counsel with respect to the summoning of witnesses, the United States Attorney was directed to advise petitioner's counsel in writing which government employee witnesses the government expected to call, and to assist in locating any government employee witnesses which the petitioner might wish to call.

Several weeks prior to the hearing (February 14, 1972), Mr. Gough, Assistant United States Attorney (Chief, Appeals-Research Division) wrote to petitioner's counsel giving the names of the federal employee witnesses which the government would have in attendance. The letter contains the following paragraph:

> "You have expressed some interest in Arnold Stone, Esquire, at the pertinent time an attorney in

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entire South American narcotics trade to Wright, but that Wright declined the offer. Wright also claimed that he was falsely imprisoned, and was entrapped by an FBI informer (though his matter had been handled by the Secret Service); that Wright stated he had valuable securities secreted in South America, and that on his release from prison, he expected to go and retrieve them.

When called as a witness in the present hearing, Williiams had suffered a loss of memory. He denied any first-hand knowledge of any of these matters. It was, he says now, only gossip and hearsay.

the Department of Justice, as a possible witness. Mr. Stone is no longer with the Department, and the last known address we have for him is Sanders & Walker Law Building, Charlotte, North Carolina 28210, telephone 704-331-9661. We do not expect to call him as a witness nor to arrange for his presence at the hearing."

Mr. Stone was not called as a witness for either party, nor was his deposition offered. Now petitioner asks that the matter be reopened for the taking of Stone's testimony. His present address is shown as Sanders & Walker Law Building, Charlotte, North Carolina. This is no more than further fishing and wishful thinking on the part of petitioner. There is nothing to suggest Mr. Stone has any additional information about the plea bargaining with Abramson, which has been so exhaustively considered.

The several motions to reopen are not well taken and are denied.

The petition for relief under § 2255 is denied.

The foregoing is adopted as Findings of Fact and Conclusions of Law.

The clerk will file this Memorandum and Order and furnish a true copy to counsel of record.

Done at Houston, Texas, this 5th day of September, 1972.

BEN CONNALLY
United States District Judge

(Seal)

APPENDIX "B"

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 72-3225
Summary Calendar*

JOSEPH STASSI, JR.,
Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,
Respondent-Appellee.

Appeal from the United States District Court for the Southern District of Texas

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(April 16, 1973)

Before GEWIN, COLEMAN and MORGAN, Circuit Judges.

PER CURIAM: AFFIRMED. See Local Rule 21.[1]

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* Rule 18, 5 Cir. See Isbell Enterprises, Inc. v. Citizens Casualty Company of New York, et al., 5 Cir. 1970, 431 F.2d 409, Part I.

1. See NLRB v. Amalgamated Clothing Workers of America, 5 Cir. 1970, 430 F.2d 966.

IN THE

United States District Court

FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. 71-H-913

JOSEPH STASSI,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

(Filed September 6, 1972)

JUDGMENT

In accordance with the Memorandum and Order of the same date, petitioner's motion to vacate sentence is found to be without merit and it is hereby ORDERED, ADJUDGED and DECREED that petitioner's motion under 28 U.S.C. § 2255 is denied.

This is a final judgment.

The clerk will file the Judgment and furnish true copies hereof to the appropriate parties.

Done at Houston, Texas, this 5th day of September, 1972.

BEN C. CONNALLY
United States District Judge

(Seal)

APPENDIX "C"

STATE OF GEORGIA

COUNTY OF DEKOLB

BEFORE ME, the undersigned authority, a Notary Public in and for Dekolb County, Georgia, on this day personally appeared ALLEN ELI WRIGHT and after first being duly sworn upon his oath deposed and stated:

"My name is Allen Eli Wright. On or about July 11, 1962, I came into contact with a man in the Federal Tank, of the Harris County Jail, located in Houston, Texas. This man called himself Milton Bennet, and according to his story, had been caught with a lot of heroin, and that he was practically the head of the narcotic drug business in the United States. As there was a great deal of publicity involved in my arrest, Milton Bennet began to make overtures of friendship and offers of a job in his organization. He was expecting to go free at any moment on bond, and accordingly, he would be back in business. I listened to his talk for about three or four months. When he saw that I was going to make bond, he approached me for him to use my Bondsman. He said he would pay both fees, and would be right back on top of the world, as soon as he got out and got to a phone. I declined to enter this arrangement, but as we both had the same lawyer, I gave Clyde Woody some messages for him.

I remained on bond until my trial in January of 1963, when I was found guilty and remanded back to the Federal Tank in the Harris County Jail. Bennet was still there, still as overbearing as ever, but a little scared. He was injecting into his talk threats against various people, whom I did not know, and saying he could make a deal. The Government wanted him to

give them a fellow named Stacy, or close to this name, and unless this fellow made his bond, he was going to trade them this guy for a light sentence. Guilty or not, he was going to tell them this fellow was his partner, unless he got him out on bond.

When I next saw Clyde Woody, I told him of the threats this guy was making to trade this fellow to the prosecution, unless he made his bond, and that if he knew this man Stacy, he should let him know of this fellow Bennet's wild statements. Clyde seemed to think the Government would not accept any such deal, and we let the matter drop.

The next week Bennet began to tell me of his connections, in Mexico, and their plant in Durango, or close to that neighborhood, run by a Dr. Gray. Also of a man named Brady, from whom he had been taking his out-put at the plant. I guessed from his talk, Brady and associates owned the plant, and Dr. Gray provided the know-how for the refining of the poppys. Brady and associates planted, raised and refined the poppys. All this operation had been going on for years, and according to him, he had been handling their entire out-put of everything for a period of several years. The product was supposed to have perfect grade, purity, etc. Now he proposed to me that I get out on bond, get him out, and he would pay me One Hundred Thousand ($100,000.00) Dollars. Then we would move his entire operation to the Carribean area, in one of the Central American countries. That he and his associates had two boats, for use on delivery, to the States, and the boats were exactly alike, so there would be no chance of them ever being caught. When I told him again, as I had before, that I had no intention of going into the drug business, he became angry. I also told him at this time that One Hundred Thousand ($100,000.00) Dollars would not tempt me to have Bondsmen and the Government looking for me. He became despond-

ent and started to write a letter to the D.A., saying they wanted some one, and as he had two or three convictions, he was going to mail the letter unless he was bonded out by Monday morning, and if I saw Clyde, for me to tell him, so he could tell his New York lawyer.

I saw Clyde Woody the next morning and relayed his message to and the threats Bennet was making. He was inclined to think Bennet was lying or crazy, but Clyde told me that if I thought he was serious I should write a letter to the District Attorney and tell him about the situation, as he was sure the D.A. would not want a fellow indicted just because he did not make this guy's bond, because in that case, he might even give them me, as I had also refused to make his bond. Clyde told me to go ahead and contact the D.A. right away and explain this guy's stupid threats, and he was sure, that would be the end of it, as he was sure the Government wanted no man indicted or convicted in such a manner as this, that it would be contrary to the law for them to take a man before the Grand Jury, knowing he was going to lie, or get revenge for not having his bond made. He said, though, he nor I knew the man, at least I could let the D.A. know of the situation, and he was sure that would be the end of it.

I then sat down and wrote a letter to Mr. William Schultz, the Assistant District Attorney who had prosecuted me. I asked him to come and see me on a matter of importance. I gave this letter to the Jailor, to have Capt. Bond, Chief Jailor, see that Mister Schultz got it. The next day at about 1:30, Mr. Schultz had me called out and brought down to a small office adjoining the offices of the Chief Deputy, Lloyd Frazier, of the Harris County Sheriff's Department. The Chief and several officers were present when I was brought down. Mr. Schultz had the agent in charge of the U. S. Secret Service, Mr. Lane Bertram, with him.

I explained exactly as said above to Mr. Schultz, and ended by saying, this man is at the breaking point and will give you anyone you want, guilty or not, just so long as he does not get all of that time. I said Mr. Woody asked me to tell you this, as he said he knew you did not want to take anyone to the Grand Jury knowing he was going to lie and give them anyone, simply because his bond was not made. Mr. Schultz said, we want that man in the Courtroom, anyway, we can get him there. Mr. Bertram said he did not think the Government wanted to indict a man on a known lie, or to impose a fraud on the people of the Grand Jury, but it was interesting to know I thought he would lie, and for me to find out if I thought there was any truth at all, to his story. I told him at this time, that if Bennet testified he would lie, and as far as that went, right now he could give me to the Government Grand Jury, and for the same reason, for I had also refused to make his bond. Mister Bertram said the Government did not work that way, and thanked me for bringing it to their attention. He then asked me if I knew a man in the Bank at Victoria, Texas, who had been taking bonds from the Bank, and selling them. When I said no, they took their departure and I went back to the cell.

I saw Milton Bennet one more time after he became a witness for the Government, to talk to, that is. He kept sending me word in the Jail to talk to him, and I spoke to him for a few moments through the hole in the cell door, where he was placed after he made his statement. He asked me if I would get in touch with Clyde Woody, his New York lawyer, and if possible all of the people he testified against. To tell them he had lied to keep from getting a sixty (60) year sentence, but that he would never testify on the witness stand. The man was crying and said to me,

"I am no stool pigeon, and I only did it because they could have given me from sixty to two hundred years."

ALLEN ELI WRIGHT
Allen Eli Wright

SWORN AND SUBSCRIBED to before me on this the 27 day of Feb., A.D., 1969.

Wm. Kennedy
Notary Public in and for
Dekolb County, Georgia
Parole Officer 18 USC 4004

APPENDIX "D"

28 December 1971

I am Milton Abramson. I am a parolee in the United States District Court for the Northern District of Illinois. Prior to my pleading guilty, in my last conviction, I discussed my case with William Jackson, then First Assistant U. S. Attorney in the Southern District of Texas. Mr. Jackson told me that if I co-operated with the government he would see that I received no more than two to ten years as a sentence.

I also discussed this with my attorney, Clyde W. Woody, and he told that he had discussed this with Mr. Jackson and Mr. Jackson had assured him that the sentence would be two to ten years. Mr. Woody, Mr. Jackson and myself went into a private room off the courtroom and in this room Mr. Jackson again promised me two to ten years and said to me that he is interested in getting Joe Stassi and I said to him, "I'll deliver Joe Stassi."

MILTON BENNETT ABRAMSON
Milton Abramson

JOSEPH G. COLOSIMO

Witness: Joseph G. Colosimo
Parole Officer

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-108

JOSEPH STASSI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that the government failed to disclose evidence favorable to petitioner, and concealed the fact that the chief government witness committed perjury.

After a jury trial in the United States District Court for the Southern District of Texas petitioner was convicted of conspiracy to smuggle heroin into the United States, and to conceal and facilitate its transportation, in violation of 21 U.S.C. (1964 ed.) 174. After the jury verdict of guilty, the trial judge granted a new trial because certain contacts had been permitted with the sequestered jury. At the second trial petitioner was again convicted. He was sentenced to a term of imprisonment for eighteen years.

The court of appeals remanded the case to the district court for the limited purpose of determining whether petitioner's conviction was an outgrowth of electronic surveillance which he might have the standing to question. *Stassi* v. *United States,* 410 F. 2d 946 (C.A. 5). After a hearing on this issue, it was determined that petitioner's conviction was not an outgrowth of any illegal electronic surveillance. The court of appeals affirmed, *United States* v. *Stassi,* 431 F. 2d 353 (C.A. 5).

Petitioner then brought a proceeding pursuant to 28 U.S.C. 2255. The United States District Court for the Southern District of Texas denied his motion in a lengthy opinion (Pet. App. A). The court of appeals affirmed without opinion, 475 F. 2d 1403 (C.A. 5).

1. The facts in this case, which provide the background for the Section 2255 motion and the instant petition, are set forth in the opinion of the district court (Pet. App. A, pp. 21-27). Briefly, petitioner was indicted in 1963, along with eight other co-defendants, for conspiracy to smuggle heroin into the United States. Petitioner immediately became a fugitive. "He remained in this status, using fictitious names, false identification, wearing a new mustache, and moving frequently from one address to another until his arrest in Florida [on] January 25, 1966" (Pet. App. A, p. 24).

The principal witness at trial against petitioner Stassi was one Milton Abramson, an accomplice, who had pleaded guilty, and was sentenced some three years prior to petitioner's arrest to a total of 16 years' imprisonment. Abramson had also testified against petitioner before the grand jury. At the trial, as summarized in the district court opinion (Pet. App. A, p. 25):

> Abramson testified at length as to his association with Stassi, who was the money man in the entire

enterprise. He testified to various pickups which he (Abramson) had made of quantities of narcotics (usually in the range of 20 pounds), at Stassi's direction, and of his subsequent delivery to Granza and Ferrara. He testified to a number of trips to Mexico City, sometimes with Stassi, when arrangements were made for the purchase from "the French Connection", Mondoloni and Chauvet (who have never been arrested). (Stassi II, pp. 228-457.) Again his testimony was corroborated in meticulous detail by documentary evidence such as hotel registrations, airplane tickets, telephone toll charges, etc. (e.g. Stassi II, pp. 952-970, 975-989, 999-1022.)

The cross-examination of Abramson by petitioner's trial counsel, Percy Foreman, was "extensive and exhaustive" (Pet. App. A, p. 26). As the district court found (Pet. App. A, pp. 26-27):

> * * * It consumes some 50 pages of the record (Stassi II, pp. 458-953). Mr. Foreman was armed at that time (1) with Jencks Act statements furnished by the government (Stassi II, pp. 665-671); (2) with Abramson's testimony before the grand juries, furnished by the government (Stassi II, pp. 651-654, 673); (3) with Abramson's testimony in the Granza and Ferrara trial (Stassi II, pp. 695-696); and (4) with the transcript of the first Stassi trial in Corpus Christi (Stassi II, pp. 656-657, 850-853). He was aware at that time, and cross-examined Abramson extensively about, his agreement to testify in return for the promises made by the government, set out above (see e.g. 825-856, 482-515 and Opening Statement by Mr. Foreman, pp. 184-187 of Stassi II).

2. Petitioner alleges here (1) that the government "willfully concealed pertinent information and facts concerning petitioner's case" (Pet. p. 7) and (2) that the "simple facts reveal that at both Stassi trials (the Records of which are now part of this hearing) Milton Abramson denied any deal, trade or promise of leniency, and the Assistant United States Attorneys prosecuting the case sat silent and permitted such lies to go to the jury" (Pet. p. 14). These claims are without merit. The detailed opinion and findings of fact made by the district court (Pet. App. A) after a hearing, which are completely ignored by petitioner, show (1) that there is no basis whatever for the claim that any "pertinent information" was concealed and (2) that contrary to petitioner's claim, made without any reference to the record, Abramson was not permitted to testify falsely that no "deal, trade or promise of leniency" had been made. The testimony at petitioner's trial revealed that Abramson had been promised "that if he cooperated fully" the United States Attorney's office "would assist him at a later date in a request he might make for executive clemency" (Pet. App. A, p. 23). As the district court found, without contradiction from petitioner's trial counsel, the latter was "aware" of the promises made to Abramson and examined him "extensively about his agreement to testify in return for the promises made by the government" (Pet. App. A, p. 26).

We rely upon the exhaustive opinion of the district court in urging that the petition for a writ of certiorari be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

AUGUST 1973.